

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Geographic Partitioning and Spectrum)
Disaggregation by Commercial Mobile)
Radio Services Licensees)

WT Docket No. 96-148

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COMMENTS OF
THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

CTIA commends the Commission in its continuing efforts to ensure that broadband PCS licensees have the flexibility they need to provide consumers with innovative wireless services in a competitive marketplace. CTIA supports the proposed modifications to the Commission's broadband PCS rules governing geographic partitioning and spectrum disaggregation to the extent that the modifications: 1) provide all PCS licensees with greater flexibility and efficiency in the use of PCS spectrum, 2) facilitate competition by encouraging greater participation in PCS by a variety of applicants, including small businesses, rural telephone companies, women and minorities, 3) encourage the development of niche markets and special service offerings, and 4) advance the swift deployment of PCS services to all areas of the country, particularly to communities that may not otherwise receive PCS or wireless services in the near future.

TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY.....	ii
I. INTRODUCTION.....	1
II. EXPANDING THE GEOGRAPHIC PARTITIONING PROVISIONS AND PERMITTING SPECTRUM DISAGGREGATION IMMEDIATELY PROVIDES PCS LICENSEES WITH GREATER FLEXIBILITY AND ALLOWS MARKET FORCES TO DICTATE THE EFFICIENT USE OF PCS SPECTRUM.....	3
III. THE COMMISSION SHOULD NOT IMPOSE ANY ADDITIONAL RESTRICTIONS ON THE SIZE OF THE PARTITIONED AREA OR THE AMOUNT OF SPECTRUM DISAGGREGATED....	5
IV. THE COMMISSION SHOULD ADOPT PARTITIONING AND DISAGGREGATION RULES THAT FACILITATE ENTRY OF SMALL ENTREPRENEURS.....	8
V. THE COMMISSION SHOULD ADOPT FLEXIBLE LICENSE TERMS FOR PARTITIONED AND DISAGGREGATED LICENSES.....	9
VI. WHILE CONSTRUCTION REQUIREMENTS MAY BE USEFUL TO ENSURE THE BUILD-OUT OF PCS SERVICES, THE COMMISSION SHOULD ADOPT A FLEXIBLE APPROACH TO MEET THESE REQUIREMENTS.....	10
VII. PARTITIONEES AND DISAGGREGATEES SHOULD BE TREATED SIMILAR TO OTHER PCS LICENSEES WITH RESPECT TO THE MICROWAVE RELOCATION RULES.....	11
CONCLUSION.....	13

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The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Comments in response to the Notice of Proposed Rule Making in the above-captioned proceeding.²

I. Introduction

In the Notice, the Commission proposes to modify its broadband PCS rules to expand the geographic partitioning provisions to all PCS licensees and to permit spectrum disaggregation in the near term.³ Specifically, the

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service providers, including cellular, personal communications services, enhanced specialized mobile radio, and mobile satellite services.

² Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, Notice of Proposed Rule Making in WT Docket 96-148, FCC 96-287 (released July 15, 1996) ("Notice").

³ Notice at ¶ 1.

Commission proposes to relax its geographic partitioning rules for the A, B, D, and E blocks to allow any entity to acquire a license for a partitioned geographic service area provided that it meets the Commission's eligibility requirements for broadband PCS licenses.⁴ Frequency blocks C and F are designated as entrepreneurs' blocks. With respect to the entrepreneurs' block, the Commission proposes to allow an entrepreneurs' block licensee to partition at any time to other parties that would be eligible for licenses in the entrepreneur blocks.⁵ The FCC also proposes to allow spectrum disaggregation by all PCS licensees prior to January 1, 2000 and to eliminate the condition that a licensee must meet the five-year build out requirements prior to disaggregation.⁶ The Commission also proposes similar modifications with respect to entrepreneurs' blocks licensees.⁷

The Commission states that the proposed expansion of its partitioning and spectrum disaggregation rules reflects its continuing efforts "to improve the efficiency of spectrum use,

⁴ Notice at ¶ 16.

⁵ Notice at ¶ 21.

⁶ Notice at ¶ 38.

⁷ Specifically, the Commission proposes to allow all entrepreneur block licenses to disaggregate to similarly qualifying parties at any time without restriction, and to parties not eligible for entrepreneur block licenses after a five-year holding period. Notice at ¶ 21.

eliminate entry barriers, reduce unnecessary regulatory burdens on spectrum users, encourage competition and provide services to the largest feasible number of users."⁸

CTIA supports these goals, and therefore supports the proposed modifications, as set forth below.

II. Expanding The Geographic Partitioning Provisions And Permitting Spectrum Disaggregation Immediately Provides PCS Licensees With Greater Flexibility And Allows Market Forces To Dictate The Efficient Use Of PCS Spectrum.

CTIA has long urged the Commission to allow market forces -- through the auction process and aftermarket transactions -- to determine optimal geographic license areas and spectrum configuration with respect to designing efficient PCS services.⁹ By allowing all PCS licensees immediate flexibility to take advantage of geographic partitioning and spectrum disaggregation, the Commission recognizes that as broadband PCS develops, market forces and technology, rather

⁸ Notice at ¶ 2.

⁹ See, e.g., Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket 90-34, Petition for Reconsideration of The Cellular Telecommunications Industry (filed December 8, 1993), Reply to Oppositions of the Cellular Telecommunications Industry Association (filed January 13, 1994), Petition for Further Reconsideration of the Cellular Telecommunications Industry Association (filed July 25, 1994). See also Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket 93-253, Petition for Reconsideration of the Cellular Telecommunications Industry (filed August 22, 1994).

than regulatory fiat, will yield the most efficient use of the spectrum.

CTIA agrees that by expanding the partitioning rules and allowing spectrum disaggregation sooner, the Commission will provide PCS licensees with greater flexibility to use their PCS spectrum to develop niche markets and innovative wireless service offerings. If adopted, the proposed amendments to the geographic partitioning and spectrum disaggregation rules will facilitate competition in the CMRS marketplace by providing more licenses and licensees per service area, and will allow smaller entities who were foreclosed from previous broadband PCS auctions with another opportunity to obtain PCS licenses.

Furthermore, the proposed amendments are consistent with the Commission's recent decisions that stimulate wireless competition by providing CMRS providers, including PCS providers, with greater flexibility.¹⁰ CTIA urges the

¹⁰ "By giving CMRS providers greater flexibility to provide these fixed services, whether separately or in combination with mobile services, [the Commission] establish[es] a framework that will stimulate wireless competition in the local exchange market, encourage innovation and experimentation in development of wireless services, and lead to a greater variety of service offerings to consumers." Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order in WT Docket 96-6, FCC 96-283 (released August 1, 1996), ¶3 ("Flexible Use Order").

Recently, the Commission amended its rules governing the entrepreneurs' blocks to permit transfers and assignments of licenses to other entrepreneurs in the first five years after license grant. The Commission stated,

Commission to continue to refine its rules to allow all CMRS licensees greater flexibility to provide innovative wireless services to all areas of the country, particularly unserved areas.

III. The Commission Should Not Impose Any Additional Restrictions On The Size Of The Partitioned Area Or The Amount Of Spectrum Disaggregated.

The Commission tentatively concludes that it should allow non-entrepreneur block licensees to partition a portion of their license area only along county lines.¹¹ The Commission, however, seeks comment on: 1) whether it should impose additional limitations on the size of the geographic area that non-entrepreneur block licensees would be allowed to partition; and 2) whether it should impose similar restrictions on the amount of spectrum a licensee may disaggregate.¹² The Commission tentatively concludes it will

"Modifying the rules...provide entrepreneurs' blocks winners with flexibility to engage in market transactions that do not undermine our stated objective of promoting a diverse and competitive PCS market." Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order in WT Docket No. 96-59, FCC 96-278 (released June 24, 1996), ¶ 83("PCS/Cellular Cross-Ownership Order") (emphasis added). The Commission also has stated that application of "the single 45 MHz CMRS spectrum cap will give both cellular and PCS providers more flexibility to participate in a more competitive marketplace." PCS/Cellular Cross-Ownership Order at ¶ 105.

¹¹ Notice at ¶ 18.

¹² Notice at ¶¶ 19, 42.

not permit disaggregation of spectrum smaller than a 1 MHz block of paired frequencies, thus requiring the disaggregating licensee to retain a minimum of 1 MHz.¹³

The proposal to use existing political boundaries such as county lines makes good practical sense. The Commission should not impose any additional restrictions on the size of the geographic area or the amount of spectrum for disaggregation. Additional restrictions defeat the Commission's goal of providing greater flexibility and efficiency in the use of PCS spectrum. The size of the partitioned area and the amount of spectrum disaggregated are most efficiently optimized by the licensee's business strategies and market forces. For example, if a small business developed a niche market for PCS service which requires only 30 KHz of PCS spectrum for its chosen technology, the imposition of a 1 MHz retention requirement would thwart the new entry by requiring it to obtain more spectrum than it needs. Such results are contrary to the Commission's policy goals that promote efficient use of spectrum.

While the administrative burden of licensing partitioned areas and disaggregated spectrum may be a legitimate concern,¹⁴ the Commission has considerable experience with

¹³ Notice at ¶ 42.

¹⁴ Notice at ¶ 42.

licensing partitioned CMRS licenses, e.g., cellular licenses. This experience, and the Commission's overall efforts to streamline the licensing processes,¹⁵ should ensure the efficient administration of licensing partitioned areas and disaggregated spectrum.¹⁶

The 45 MHz CMRS spectrum aggregation cap provides more than sufficient safeguards to protect against excessive concentration and anti-competitive conduct.¹⁷ In fact, the Commission has abandoned other restrictions, such as the PCS/cellular cross-ownership rule and the 40 MHz PCS spectrum cap, and retained the 45 MHz CMRS aggregation spectrum cap as "one of the most effective mechanisms" to avoid excessive concentration of licenses and promote the diversity of ownership mandated under Section 309(j) of the Communications Act.¹⁸ The imposition of any additional restrictions on the partitioned areas or limitations on the amount of disaggregated spectrum is contrary to the Commission's goal of

¹⁵ See, e.g., Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, 9 FCC Rcd 6513 (1994).

¹⁶ Off-the-shelf mapping and database software exists that dramatically lessens the administrative burdens formerly associated with licensing. For example, CTIA has developed the SourceDisk™ service that easily tracks cellular, PCS, and ESMR licenses.

¹⁷ PCS/Cellular Cross-Ownership Order at ¶¶ 94-101.

¹⁸ PCS/Cellular Cross-Ownership Order at ¶ 102.

providing cellular and PCS providers with the flexibility they need in a competitive marketplace.¹⁹

IV. The Commission Should Adopt Partitioning And Disaggregation Rules That Facilitate Entry Of Small Entrepreneurs.

The Commission proposes to allow licensees in the entrepreneurs' blocks to partition their licenses or disaggregate spectrum at any time to entities that qualify as entrepreneurs and meet the Commission's eligibility requirements for broadband PCS licenses.²⁰ In addition, the Commission proposes to impose its current five-year restriction against license transfers to prohibit partitioning and disaggregation by an entrepreneurs' block licensee to a non-entrepreneur during the first five years of the license period.²¹

CTIA recognizes the critical balance between providing flexibility to all PCS licensees, including entrepreneurs' blocks licensees, and providing adequate protection against trafficking of licenses and any subsequent unjust enrichment.

¹⁹ PCS/Cellular Cross-Ownership Order at ¶ 105.

²⁰ Notice at ¶¶ 21, 46.

²¹ Notice at ¶¶ 24, 46. If the entrepreneur block licensee disaggregates spectrum by selling it to a non-entrepreneur entity, the Commission proposes that the entrepreneur block licensee will be required to repay the unjust enrichment provisions on a proportional basis. Notice at ¶¶ 23, 46.

To the extent that the Commission's proposals provide additional economic opportunities for smaller entrepreneurs, and facilitate the build out of their systems and delivery of PCS services, CTIA supports the proposal. However, any proposal that imposes different requirements on entrepreneur and non-entrepreneur block licensees with respect to the amount of spectrum they may disaggregate or the size of the partitioned area should be rejected. As explained above, the 45 MHz CMRS spectrum aggregation cap, along with the proposed anti-trafficking rules, provides more than adequate safeguards to avoid excessive concentration of PCS licenses and to provide diversity in ownership.²²

V. The Commission Should Adopt Flexible License Terms For Partitioned And Disaggregated Licenses.

The Commission proposes to establish license terms that will allow a partitionee to hold its license for the remainder of the original licensee's ten-year license term.²³ The Commission also proposes a similar licensing term for disaggregates.²⁴

The Commission's proposed license terms conform with the licensing term requirements applicable to other CMRS

²² See Infra pp. 7, 8.

²³ Notice at ¶ 29.

²⁴ Notice at ¶ 57.

providers, i.e., paging, narrowband PCS, broadband PCS.²⁵

CTIA supports this proposal. In addition, if the license term will end before the new licensee can establish a record of proving "substantial service," a partitionee and disaggregatee should be afforded the option of availing itself of the renewal expectancy established by the original licensee.

The proposed construction requirements provide more than adequate protection against licensees using geographic partitioning and spectrum disaggregation as a means to warehouse spectrum, and therefore, should be adopted.

VI. While Construction Requirements May Be Useful To Ensure The Build-Out Of PCS Services, The Commission Should Adopt A Flexible Approach To Meet These Requirements.

While construction requirements may be a useful mechanism to ensure coverage of both partitioned areas and use of the disaggregated spectrum, the Commission's proposed build-out options²⁶ provide the parties with needed

²⁵ Notice at ¶ 29.

²⁶ Under the first option, a partitionee must satisfy the same construction requirements as the original licensee within its partitioned area, regardless of when it acquired the partitioned license. The second option proposes more modest build-out requirements for a partitioned area where the original licensee has met its five-year build-out requirements and certifies that it will meet the ten-year coverage requirements for its entire license area. The partitionee must only satisfy the substantial service requirements for renewal expectancy for its partitioned area by the end of the original ten-year license term. Notice at ¶¶. 33, 34. The Commission also proposes similar build-out requirements for spectrum disaggregation. See Notice at ¶¶. 52, 53.

flexibility. This approach allows the parties, rather than the Commission, to negotiate and select build-out options that best suit their business plans and strategies for the delivery of PCS services. While the FCC's proposal provides an appropriate equipoise between regulatory oversight and private business arrangements, the Commission also should permit the parties to develop other approaches to build-out, subject to Commission review and approval, that provide even greater flexibility when needed to meet the Commission's goals of providing PCS services to all areas of the country.

VII. Partitionees and Disaggregates Should Be Treated Similar To Other PCS Licensees With Respect To The Microwave Relocation Rules.

In the Notice, the Commission tentatively concludes that a new entrant PCS licensee who gains its license through partitioning or disaggregation should be treated as any other subsequent PCS licensee for purposes of the relocation cost-sharing plan, unless the reimbursement obligations have already been paid by the transferring licensee.²⁷ CTIA agrees that new entrants should be treated like any other PCS licensee for these purposes. If the transferring licensee already has paid any or all of its cost-sharing obligations, the licensee can seek recovery of its expenditures as part of its agreement to disaggregate its spectrum or partition its

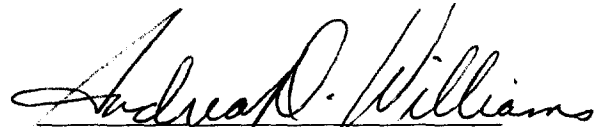
²⁷ Notice at ¶ 64.

license area. Compensation for the licensee's legitimate share of the costs of relocating fixed microwave facilities should not be considered if the licensee is subject to the Commission's unjust enrichment rules.

CONCLUSION

CTIA respectfully requests THAT the Commission adopts the proposed modifications to expand the geographic partitioning provisions to all PCS licenses and to permit spectrum disaggregation in the near term in accordance with the recommendations herein.

Respectfully submitted,

A handwritten signature in cursive script, reading "Andrea D. Williams".

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